Office - Supreme Court, U.S.
FILED
APR 2 1957
JOHN T. FEY, Clerk

LIBRARY
SUPREME COURT, U.S.

No. 572

In the Supreme Court of the United States

OCTOBER TERM, 1956

CLEMENTE MARTINEZ PEREZ, PETITIONER

v.

HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT

J. LEE RANKIN,
Solicitor General,
WARREN OLNEY III,
Assistant Attorney General,
OSCAR H. DAVIS,
Assistant to the Solicitor General,
J. F. BISHOP,
Attorney,
Department of Justice, Washington 25, D. C.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	1
Statute involved	2
Statement	3
Summary of argument	5
Argument:	
Introduction	10
I. The power of Congress to designate what conduct shall effect loss of nationality is not restricted to instances where the citizen desires to give up his United States citizenship, but may also be employed where it is reasonable for Congress to prescribe that loss of citizenship shall follow specified conduct by an American	13
A. The Congressional power to designate conduct which shall result in expatriation is an attribute of sovereignty which does not depend upon the individual's intention to give up his citizenship	13
B. Congress can declare that conduct shall result in loss of nationality where such conduct may lead to international embroilment or adversely affect the cardinal elements of allegiance to the United States	29
II. Congress has the constitutional power to provide that United States nationality is lost by one who remains outside the jurisdiction of the United States in time of war to evade military service, by one who votes in a foreign state, by a dual-national who serves in the armed forces of his other nation, and by a serviceman who is convicted of desertion in wartime	38
A. Section 401 (c)—service by a dual-national in the forces of his other state	38

Argument—Continued
II. Congress has the constitutional power, etc.—Con.
B. Section 401 (e)—voting in a foreign political election — Page 39
C. Subsection (j)—remaining abroad to evade military service — 40
D. Subsection (g)—deserting the armed forces — 49
III. The provisions of the expatriation statute do not involve criminal prosecution or punishment — 50
Conclusion — 58
Appendix A: Section 401 of the Nationality Act of 1940 — 59–61
Appendix B: Immigration and Naturalization Service Statistics on Expatriation — 62–63

CITATIONS

Cases:
Acheson v. *Maenza*, 202 F. 2d 453 — 26
Acheson v. *Mariko Kuniyuki*, 189 F. 2d 741, 190 F. 2d 897, certiorari denied, 324 U. S. 942 — 4, 19, 29
Acheson v. *Wohlmuth*, 196 F. 2d 866, certiorari denied, 344 U. S. 833 — 4, 19
Adler v. *Board of Education*, 342 U. S. 485 — 56
A— H—, In the Matter of, 2 I. & N. Dec. 390 — 19
American Communications Assn. v. *Douds*, 339 U. S. 382 — 56
Barsky v. *Board of Regents*, 347 U. S. 442 — 56
Bauer v. *Clark*, 161 F. 2d 397, certiorari denied, 332 U. S. 839 — 20
Burnet v. *Brooks*, 288 U. S. 378 — 16
Carver, In re, 142 Fed. 623 — 44
Cavender v. *United States*, 8 C. Cls. 281 — 44
Dos Reis v. *Nicolls*, 161 F. 2d 860 — 26
Falbo v. *United States*, 320 U. S. 549 — 47
Federici v. *Miller*, 99 F. Supp. 962 — 20
Fong Yue Ting v. *United States*, 149 U. S. 698 — 16
Francis v. *Resweber*, 329 U. S. 459 — 58
Galvan v. *Press*, 347 U. S. 522 — 57
Garner v. *Board of Public Works of Los Angeles*, 341 U. S. 716 — 56
Girouard v. *United States*, 328 U. S. 61 — 47
Goad v. *Moulton*, 67 Cal. 536, 8 Pac. 63 — 30
Gonzales v. *Landon*, 215 F. 2d 955, reversed, 350 U. S. 920 — 19, 29, 45, 46

Cases—Continued

Page

Gotcheus v. *Matheson*, 58 Barb. 152, reversed, 61 N. Y. 420 43
Griffin, Ex parte, 237 Fed. 445 25
H—, In the Matter of, 4 I. & N. Dec. 540 19
Harrisiades v. *Shaughnessy*, 342 U. S. 580 ..... 10, 57
Hawker v. *United States*, 170 U. S. 189 ..... 10, 56
Helvering v. *Mitchell*, 303 U. S. 391 ..... 10, 51
Hisao Murata v. *Acheson*, 99 F. Supp. 591, remanded, 342 U. S. 899 ..... 17, 28
Holt v. *Holt*, 59 Me. 464 44
Huber v. *Reily*, 53 Pa. 112 ..... 44, 53
Kasumi Nakashima v. *Acheson*, 98 F. Supp. 11 20
Kawakita v. *United States*, 343 U. S. 717 ..... 19, 25, 26
Kiyokuro Okimura v. *Acheson*, 111 F. Supp. 303 28
Kiyokuro Okimura v. *Acheson*, 99 F. Supp. 587, remanded, 342 U. S. 899 ..... 17, 28
Knauer v. *United States*, 328 U. S. 654 34
Kurtz v. *Moffit*, 115 U. S. 487 ..... 44, 53
Lapides v. *Clark*, 176 F. 2d 619, certiorari denied, 338 U. S. 860 ..... 20, 33, 48
Lichter v. *United States*, 334 U. S. 742 47
Mackenzie v. *Hare*, 239 U. S. 299 ..... 4, 6, 7, 14, 15, 17, 24, 26, 30–31, 33, 48, 50
Marler v. *Eby*, 264 U. S. 32 57
Mandoli v. *Acheson*, 344 U. S. 133 ..... 19, 22, 23, 25, 26
Marcello v. *Bonds*, 349 U. S. 302 57
Marcus, United States ex rel. v. *Hess*, 317 U. S. 537 ..... 55, 58
Marlow v. *Barlow*, 53 Cal. 456 31
McCafferty v. *Guyer*, 59 Pa. 109 ..... 44, 53
Mendoza-Martinez v. *Mackey*, 238 F. 2d 239, pending on petition for certiorari, this Term, No. 623 ..... 5, 10, 11, 14, 19, 27, 29, 37, 40, 50, 58
Minoru Hamamoto v. *Acheson*, 98 F. Supp. 904 20
Miranda v. *Clark*, 180 F. 2d 257 ..... 19, 29
Nishikawa v. *Dulles*, 235 F. 2d 135, pending on certiorari, this Term, No. 415 ..... 5, 7, 10, 11, 20, 27, 29, 37, 38, 50, 58
O'Sullivan v. *Felix*, 233 U. S. 318 56
Perkins v. *Elg*, 307 U. S. 325 ..... 18, 21, 23, 26
Revedin v. *Acheson*, 194 F. 2d 482, certiorari denied, 344 U. S. 820 ..... 20, 25

Cases—Continued

	Page
Rex Trailer Company v. *United States*, 350 U. S. 148	10, 55, 57
Sacher v. *Association of the Bar*, 347 U. S. 388	56
Savorgnan v. *United States*, 338 U. S. 491	6, 14, 18, 20, 22, 23, 24–25, 26, 32
Scavone v. *Acheson*, 103 F. Supp. 59	19
Selective Draft Law Cases, 245 U. S. 366	47
Severance v. *Healey*, 50 N. H. 448	44
Shelley v. *United States*, 120 F. 2d 734	42
State v. *Symonds*, 57 Me. 148	44, 53
Summers, In re, 325 U. S. 561	47
Trop v. *Dulles*, No. 710, this Term	5, 10, 19, 27, 35, 49, 50
United Public Workers v. *Mitchell*, 330 U. S. 75	56
United States v. *Bland*, 283 U. S. 636	47
United States v. *Curtiss-Wright Corp.*, 299 U. S. 304	15
United States v. *Macintosh*, 283 U. S. 605	47
United States v. *Schwimmer*, 279 U. S. 644	47
United States v. *Snow*, 27 Fed. Case. (No. 16350) 1255, 1256	44
United States v. *Wong Kim Ark*, 169 U. S. 649	20–21
Vidales v. *Brownell*, 217 F. 2d 136	19, 29
Weedin v. *Chin Bow*, 274 U. S. 657	42
Weems v. *United States*, 217 U. S. 349	58
Wilkerson v. *Utah*, 99 U. S. 130	58
Constitution, Federal and State statutes:	
Constitution of the United States:	
Art. 1, Sec. 8	16, 43
Fifth Amendment	29
Fourteenth Amendment	21
Nineteenth Amendment	30
Federal statutes:	
Act of March 3, 1865, 13 Stat. 490, Sec. 21	16, 41, 42, 43, 44, 45, 46, 49, 52
Act of July 27, 1868, 15 Stat. 223, Rev. Stat. § 1999, 8 U. S. C. 800	16, 23, 41, 42, 43
Act of July 2, 1940, 54 Stat. 715	42
Act of August 22, 1912, 37 Stat. 356	44
Act of September 3, 1954, 68 Stat. 1146	23
Citizenship Act of March 2, 1907, 34 Stat. 1228	15, 17, 23, 32

Constitution, Federal and State statutes—Continued
Federal statutes—Continued
Immigration and Nationality Act of 1952, 66 Stat. 163: Page
Sec. 349 (8 U. S. C. 1481) 2
Secs. 349–357 (8 U. S. C. 1481–1489) 23
Nationality Act of 1940 (54 Stat. 1137), as amended by the Acts of January 20, 1944 (58 Stat. 4), July 1, 1944 (58 Stat. 677), and September 27, 1944 (58 Stat. 746), 8 U. S. C. (1946 ed.) 501, *et seq.*:
Sec. 401 23, 36, 37, 38, 39, 51
(a) 36, 59
(b) 33, 60
(c) 7, 10, 28, 33, 36, 50, 60
(d) 28, 33, 36, 60
(e) 2, 7, 10, 27, 28, 33, 34, 50, 60
(f) 36, 60
(g) 8, 9, 10, 12, 44, 49, 50, 52, 53, 60
(h) 33, 61
(i) 36, 61
(j) 2, 7, 8, 9, 10, 11, 12, 27, 43, 44, 45, 46, 49, 50, 53, 58, 61
Sec. 404 22
Sec. 504 44
Revised Statutes 1993 42
Revised Statutes 1996, 1998 42
54 Stat. 894 58
54 Stat. 1163 51
60 Stat. 341 58
18 U. S. C. 202, 205, 206, 207, 216, 218, 281, 282, 290, 593, 1905, 1907, 1908, 1912, 1913, 2381, 2383, 2385, 2387 56
50 U. S. C. (1946 ed.) 311, App 58
California Constitution and statutes:
California Constitution of 1849, Art. XI, Sec. 14 30
California Constitution of 1879, Art. XX, Sec. 8 30
California Constitution of 1879, Amendment of 1911, Art. II, Sec. 1 31
California Civil Code:
Sec. 157 30
Sec. 158 30
Sec. 162 31

Constitution, Federal and States statutes—Continued
California Constitution and statutes—Continued
California Civil Code—Continued
Page
Sec. 171a 31
California Penal Code, Sec. 26 31
Congressional material:
86 Cong. Rec. 11942–11949 52
86 Cong. Rec. 11945–6 52
86 Cong. Rec. 12430–12431 52
90 Cong. Rec. 3256 45
90 Cong. Rec. 7628–7629 46
90 Cong. Rec. 7725–7726 46
H. Doc. No. 326, 59th Cong., 2d sess.:
pp. 3, 23 ..... 32, 34
p. 159 43
Hearings before the House Committee on Immigration and Naturalization, 76th Cong., 1st sess., on H. R. 6127:
pp. 38, 132–133 43
p. 405 18
p. 409 52
p. 489 52
p. 491 ..... 39, 43
H. Rep. No. 4784, 59th Cong., 1st sess 32
H. Rep. No. 6431, 59th Cong., 2d sess 32
H. Rep. No. 1229, 78th Cong., 2d sess 43, 45, 46, 53–55
S. Rep. No. 2150, 76th Cong., 3d sess 52
S. Rep. No. 1075, 78th Cong., 2d sess 45, 53
Miscellaneous:
Annual Reports to the Attorney General of the Commissioner of Immigration and Naturalization for the years ended June 30, 1949, and June 30, 1950 63
Annual Report to the Attorney General of the Commissioner of Immigration and Naturalization for the year ended June 30, 1956 62
Citizenship of Grover Cleveland Bergdoll, 39 Op. A. G. 303 44
Comment, 64 Yale L. J. 1164, 1185–1186 ..... 16, 50
Executive Order No. 6115 (April 25, 1933) 17
Flournoy, *Naturalization and Expatriation* (1922), 31 Yale L. J. 702, 848 22

Miscellaneous—Continued

	Page
III Hackworth, *Digest of International Law* (1942):	
Pp. 276–279	43, 44
Secs. 242–250	22
Hurst, *Can Congress Take Away Citizenship?*, 29 Rocky Mtn. L. Rev. 62	50
II Hyde, *International Law Chiefly as Interpreted and Applied in the United States* (1945 ed.), Secs. 376–387A	22
III Moore, *Digest of International Law* (1906):	
Secs. 431–469	22
Sec. 468, pp. 718–730	32
Moore, *The Principles of American Diplomacy*, ch. VII, reported in IV Collected Papers of John Bassett Moore, pp. 388–406	22
Sharon, *Loss of Citizenship by Draft Dodgers*, 5 Monthly Review of the Immigration and Naturalization Service 97 (Feb. 1948)	49
Tsiang, *The Question of Expatriation in America prior to 1907* (1942), Johns Hopkins University Studies in Historical and Political Science, Series LX, No. 3	22

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 572

CLEMENTE MARTINEZ PEREZ, PETITIONER

v.

HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the Court of Appeals (R. 15–17) is reported at 235 F. 2d 364. The findings of fact and conclusions of law of the District Court appear at pages 9 to 12 of the record.

JURISDICTION

The judgment of the Court of Appeals was entered on July 12, 1956 (R. 18). The petition for a writ of certiorari was filed on October 10, 1956, and was granted on November 13, 1956 (R. 19). The jurisdiction of this Court rests on 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether Congress has the constitutional power to provide, as it did in Section 401 (j) of the National-

ity Act of 1940, for the expatriation of a native-born citizen who, in time of war, voluntarily remained outside the jurisdiction of the United States for the purpose of evading service in the armed forces of the United States.

2. Whether Congress has the constitutional power to provide, as it did in Section 401 (e) of the Nationality Act of 1940, for the expatriation of a native-born citizen who votes in a political election in a foreign state.

STATUTE INVOLVED

Section 401 of the Nationality Act of 1940, 54 Stat. 1137, as amended by the Act of September 27, 1944, 58 Stat. 746 (8 U. S. C. (1946 ed.) 801), provided in pertinent part:[1]

> A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:
>
> * * * * *
>
> (e) Voting in a political election in a foreign state or participating in an election or plebiscite to determine the sovereignty over foreign territory; or
>
> * * * * *
>
> (j) Departing from or remaining outside of the jurisdiction of the United States in time of war or during a period declared by the President to be a period of national emergency for the purpose of evading or avoiding training and service in the land or naval forces of the United States.

[1] The provision is now incorporated in Section 349 of the Immigration and Nationality Act of 1952, 66 Stat. 267, 8 U. S. C. 1481 (a).

The text of the entirety of Section 401 of the Nationality Act is set out in Appendix A, *infra*, pp. 59–61.

STATEMENT

Petitioner seeks reversal of a judgment of the Court of Appeals for the Ninth Circuit (R. 18) affirming a judgment of the District Court for the Northern District of California (R. 12–13) which denied petitioner's request for a judgment declaring him to be a citizen of the United States (R. 1–3). The undisputed findings of fact by the District Court (R. 9–11) may be summarized as follows:

Petitioner was born in El Paso, Texas, in 1909, of Mexican-born parents. He departed to Mexico in 1919 or 1920 with his parents, and resided there continuously until 1952. He voted in a political election in Mexico in 1946. He married a Mexican national in 1932. His wife and seven children have at all times resided in Mexico. (R. 9–11.)

In July 1943, petitioner applied for admission to the United States as a Mexican alien laborer, stating that he was a citizen of Mexico, born in Encarnacion de Diaz, Jalisco, Mexico (although having been informed in 1928 that he was born in Texas). He returned to Mexico the following March (1944), but returned to the United States within a month as a laborer, again claiming native Mexican citizenship. He departed to Mexico in November 1944. (R. 10.)

Petitioner knew of the outbreak of World War II and of the duty of all male citizens of the United States to register under the selective service laws. He remained outside the United States from Novem-

ber 1944 to July 1947 to evade service in the armed forces (R. 10–11).

After the war, in 1947, petitioner sought to enter the United States as a United States citizen. Both before the Board of Special Inquiry and in his appeals to the Assistant Commissioner and to the Board of Immigration Appeals, petitioner admitted that he had remained outside the United States to avoid military service and that he had voted in Mexico. He was excluded on the ground that he had expatriated himself. (R. 10–11.)

In June 1952, petitioner entered the United States as a laborer and citizen of Mexico. He surrendered to immigration authorities in May 1953, but claimed that he was a citizen of the United States by birth. He was ordered deported. (R. 11.)

In January 1954, petitioner filed the instant complaint for a declaratory judgment to establish his United States nationality (R. 1–3). The District Court denied the complaint, holding that petitioner had lost his nationality under the Nationality Act of 1940, as amended, by remaining outside the jurisdiction of the United States, in time of war, for the purpose of evading service in the armed forces of the United States, and by voting in Mexico (R. 11–12). The Court of Appeals affirmed (R. 15–17), relying largely upon *Mackenzie* v. *Hare*, 239 U. S. 299; *Acheson* v. *Wohlmuth*, 196 F. 2d 866 (C. A. D. C.), certiorari denied, 344 U. S. 833; and *Acheson* v. *Mariko Kunikuki*, 189 F. 2d 741 (C. A. 9), certiorari denied, 342 U. S. 942.

SUMMARY OF ARGUMENT

This case and Nos. 415, 623, and 710 present the issue of the validity of four expatriation provisions of Section 401 of the Nationality Act of 1940—(subsection (c)) service by a dual-national in the armed forces of his other state; (subsection (e)) voting in a foreign political election; (subsection (g)) desertion in wartime; and (subsection (j)) departing from or remaining outside the country to evade military service.[2] We discuss the validity of all of these provisions in this brief.

I

The power of Congress to designate what conduct shall effect loss of nationality is not restricted, as the petitioners contend, to instances where the citizen desires to give up his American citizenship, but may also be employed where it is reasonable for Congress to prescribe that loss of citizenship shall follow specified conduct by an American.

A. The power to expatriate is an implied attribute of sovereignty with which the United States is invested as a nation, even though such power is not

[2] The instant case involves loss of United States nationality under the 1940 Act not only by reason of remaining in a foreign country in wartime to evade military service, but also by reason of voting in the foreign country. The companion cases of *Nishikawa* v. *Dulles*, No. 415, this Term, and *Trop* v. *Dulles*, No. 710, this Term, involve, respectively, loss of citizenship by reason of Nishikawa's service in the Japanese Army from March 1941, to August 1945, and by reason of Trop's wartime desertion of the United States Army. No. 623, *Mendoza-Martinez* v. *Mackey*, like the instant case, involves remaining abroad to evade the draft.

expressly stated in the Constitution. *Mackenzie* v. *Hare*, 239 U. S. 299; *Savorgnan* v. *United States*, 338 U. S. 491. Congress may—on grounds which are reasonable, giving due consideration to the precious character of American citizenship—fix the conditions which result in loss of nationality, regardless of the subjective intent of the individual citizen who performs the expatriating act. While the courts have found that Congress intended the act which results in expatriation to be a voluntary one, they have expressly held that the person voluntarily performing the specified act loses his nationality by the performance of such act, irrespective of his knowledge, intent, or desire that he would thereby renounce United States nationality. *E. g.*, *Savorgnan* v. *United States*, *supra*. The general power of Congress in this area has been assumed for almost a century; and the consistent current of responsible judicial decision has recognized the authority of Congress to impose loss of nationality on citizens performing certain acts voluntarily.

B. In exercising this power, Congress can declare that conduct shall result in loss of nationality where such conduct may lead to international embroilment or adversely affect the cardinal elements of allegiance to the United States. Though this authority must be reasonably exercised, it is not restricted, either historically or on principle, to instances in which the citizen acquires another nationality or allegiance, but it can extend to other cases in which "an act [of a citizen] may bring the Government into [foreign] embarrassments and, it may be, into controversies"

(*Mackenzie* v. *Hare*, *supra*, 239 U. S. at 316). Also, Congress may take account of conduct which is so inconsistent with the prime obligations of citizenship, or so denies the cardinal aspects of allegiance to this country, that it is reasonable to provide that a citizen committing such acts shall no longer remain an American.

II

Under these general standards, Congress has the constitutional power to adopt the four specific provisions of Section 401 of the 1940 Nationality Act which are involved in this series of cases. Each provision is a reasonable condition for loss of nationality.

A. Service by a dual-national in the armed forces of his other state (Section 401 (c)) leads to international conflict and may directly pit one allegiance against the other—as in Nishikawa's case, No. 415.

B. Voting in a foreign political election (Section 401 (e)) may likewise be reasonably thought to indicate too close an attachment to the foreign country, and too active a participation in its political affairs.

C. Prescribing loss of nationality for those who remain out of the country to avoid military service in wartime (Section 401 (j)) is also a reasonable exercise of the power of Congress, in the national interest, to fix the conditions of expatriation. Such persons, by their own conduct, place themselves in a class significantly different from other citizens, different even from other groups of evaders within the country for whom the ordinary criminal sanctions are available. They also present a problem in international relations since, so far as other countries are concerned, they

remain United States citizens, while, so far as this nation is concerned, they have refused to meet the obligations of citizenship.

Ever since the Civil War, the United States has felt the need for legislation of this type. A statute in force from 1865 to 1940 prescribed forfeiture of "rights of citizenship" for those who left the district of registration to evade the draft, apparently even if they did not leave the country. The constitutionality of that statute has consistently been assumed by the courts and it was legislatively and administratively treated as a full expatriation statute.

Section 401 (j) was added to the Nationality Act in 1944 because draft evasion in World War II revealed the same occasion as had existed in earlier times of emergency. The provision applies only to those draft evaders who depart or remain out of the country to avoid service. Since readiness to serve in the forces—claims of conscience aside—has always been a cardinal element of our citizenship, such draft evasion is a repudiation of the most important demand of allegiance, and an expression of preference for whatever profection another country may give in place of fulfillment of a prime duty of American citizenship. One who intentionally chooses foreign residence in preference to the obligations of citizenship is not in a position to challenge the right of Congress to implement his choice by recognizing the severance of the cords of the allegiance he has rejected.

D. Section 401 (g), prescribing loss of nationality for deserting the service in wartime, stems from the

same source as subsection (j), *supra*, and in large part is supported by the same considerations.

III

These provisions of Section 401 of the Nationality Act of 1940 do not involve criminal prosecution or punishment, and therefore should not be tested by the constitutional provisions which apply to crime.

A. There is no adequate ground for holding that Congress actually intended these provisions as *penal* sanctions. They are not worded in that fashion, and the legislative history shows that the drafters expressly disavowed a punitive purpose. The dominant objective of Congress was simply to determine what classes of persons should, because of their specific conduct, no longer be considered as citizens and entitled to treatment and protection as such. This was true, not only generally with respect to the expatriation provisions of the Nationality Act of 1940, but also specifically with respect to Section 401 (g) (which was originally part of the 1940 Act) and to Section 401 (j) (which was added in 1944).

B. Punishment is not involved merely because Congress imposes a non-penal disability or disqualification, following specified criminal conduct. Civil regulations based on past conduct are not invalid, or transformed into punitive sanctions, where the legislators have a valid non-penal objective and do not intend to inflict punishment, even though some deterrence of criminal conduct may also ensue. Scarcely any civil consequence of statutes relating to licensing, damages, or

the like, can avoid—or need avoid—incidental effects of deterrence. Cf. *Hawker* v. *United States*, 170 U. S. 189; *Helvering* v. *Mitchell*, 303 U. S. 391; *Harisiades* v. *Shaughnessy*, 342 U. S. 580; *Rex Trailer Co.* v. *United States*, 350 U. S. 148. Here, Congress intended to recognize the end of the citizenship of those whose actions indicated allegiance to, or too intimate a connection with, a foreign state, or whose conduct showed them unworthy to remain Americans. That was an adequate non-penal objective.

ARGUMENT

INTRODUCTION

1. This case presents solely the issue of the constitutionality of Section 401 (e) and Section 401 (j) of the Nationality Act of 1940 (*supra*, p. 2).[3] *Mendoza-Martinez* v. *Mackey*, No. 623, pending on petition for certiorari, also involves the constitutionality of Section 401 (j). *Nishikawa* v. *Dulles*, No. 415, concerns the validity of Section 401 (c) of the 1940 Act. The validity of Section 401 (g) is raised in *Trop* v. *Dulles*, No. 710. The Court therefore has before it the constitutionality of four of the ten separate expatriation provisions included in Section 401 of the 1940 Act (as amended)—(subsection (c)) service by a dual-national in the armed forces of his other state; (subsection (e)) voting in a foreign political election; (subsection (g)) desertion in time

[3] No other question was presented to or decided by the Court of Appeals (R. 15), or presented by the petition for certiorari, or is argued in petitioner's brief on the merits.

of war; and (subsection (j)) departing from or remaining outside the country to evade military service.[4] We shall present our main argument on the validity of all of these provisions in this brief, leaving to our brief in No. 710 some additional comments.[5]

2. The pervading theme of petitioner's argument on constitutionality—as of that of the petitioners in Nos. 415 and 710, and of the *amici* (including the petitioner in No. 623)—is that Congress cannot, under our Constitution, provide for the loss of American nationality (at least of a native-born citizen) unless the particular individual has the intention or desire to give up his American citizenship. On this assumption, the briefs make elaborate arguments purporting to show (i) that the particular conduct prescribed in the four expatriation provisions of Section 401 as causing loss of nationality does not, in itself, indicate that the petitioners desired or intended to lose their American citizenship, or that they personally "waived" their right to citizenship; (ii) that no individual proof of such desire, intention, or personal "waiver" on the part of these petitioners was made in these cases; and (iii), finally, that to the extent the four subsections of Section 401 were designed by Congress to "create"

[4] The full text of Section 401 of the Nationality Act of 1940 is set forth in Appendix A, *infra*, pp. 59–61.

[5] Our brief in No. 415 does not discuss the constitutional issue in that case but refers to this brief. Certiorari has not been granted in No. 623 and it has not been set for argument; accordingly, we are filing no brief in that case.

a "presumption" of such personal intention or desire to give up American citizenship (or of such personal "waiver" of that right), the statute is invalid because, first, the conduct defined in the four subsections cannot reasonably be said to give rise to such an inference, and, second, the statute does not permit the "presumption" to be defeated or overcome by a showing that the particular individual did not personally intend to give up his citizenship.

In our view, the petitioners' basic assumption—that no American can be expatriated unless he personally wishes to give up his citizenship—is wholly groundless, and therefore their subsidiary contentions must all fall as unsupportable. For this reason, we shall not seek to meet these subordinate points—which could have validity only if the fundamental postulate were sound—but shall directly challenge that postulate, and then show the proper foundation for federal expatriation legislation and the power of Congress in this field (Point I, *infra*). In the light of this Congressional power—which is not limited to instances in which the individual desires to give up or lose his citizenship—we shall discuss the reasons for, and the bases of, the four expatriation provisions involved in this series of cases (Point II, *infra*). In Point III, *infra,* we deal with the argument, made largely with respect to Section 401 (g) and Section 401 (j), that in those instances expatriation is an invalid punishment or penalty.

I

THE POWER OF CONGRESS TO DESIGNATE WHAT CONDUCT SHALL EFFECT LOSS OF NATIONALITY IS NOT RESTRICTED TO INSTANCES WHERE THE CITIZEN DESIRES TO GIVE UP HIS UNITED STATES CITIZENSHIP, BUT MAY ALSO BE EMPLOYED WHERE IT IS REASONABLE FOR CONGRESS TO PRESCRIBE THAT LOSS OF CITIZENSHIP SHALL FOLLOW SPECIFIED CONDUCT BY AN AMERICAN

A. THE CONGRESSIONAL POWER TO DESIGNATE CONDUCT WHICH SHALL RESULT IN EXPATRIATION IS AN ATTRIBUTE OF SOVEREIGNTY WHICH DOES NOT DEPEND UPON THE INDIVIDUAL'S INTENTION TO GIVE UP HIS CITIZENSHIP

As indicated above, we squarely challenge the main theory of the petitioners' attack—that Congress has no independent power to impose loss of nationality for designated actions, but can do no more in this area than implement or aid the citizen's own desire or intention to give up his citizenship. In our view, we *are* "dealing with a situation in which Congress has undoubted power to declare substantive law" (Pet. Br. in No. 572, p. 27).

1. At the outset, it is significant to point out explicitly—because it bears on the soundness of the basic assumption of the case against the statute—that the present petitioner does not stand wholeheartedly on the proposition that no American can be expatriated unless he desires or intends to lose his nationality. Petitioner's brief pointedly assumes that an American who accepts naturalization in another country loses his United States citizenship even though he may affirmatively wish to keep it (along

with his new nationality) (Pet. Br. in No. 572, pp. 13–14, 31), and that an American woman who married a foreigner in the United States could be expatriated (when the law so provided) even though she desired to retain her American citizenship (Pet. Br. in No. 572, pp. 29–30).[6]

These important deviations from the fundamental theory of petitioner's case are compelled, no doubt, by the two leading decisions of this Court in this field—*Mackenzie* v. *Hare*, 239 U. S. 299 (marriage of an American woman to an alien) and *Savorgnan* v. *United States*, 338 U. S. 491 (acquisition of foreign nationality by naturalization)—both of which upheld expatriation despite the claim, *and the express showing*, that the individual wished to remain an American. These two rulings (on the first of which Congress relied when it enacted the Nationality Act of 1940 and both of which supported Congress in 1952) demonstrate that, as petitioner admits by recognizing the exceptions, the touchstone for expatriation is, not the citizen's personal desire with respect to his citizenship or his words of allegiance, but his voluntary *conduct*. While the particular act upon which expatriation rests must, at least under Section 401 of the 1940 Act, be a voluntary one, the person freely committing the expatriating act need not have the subjective intent to expatriate himself, *i. e.*, to choose another allegiance over that of this country or to renounce his American nationality. If he freely does

[6] Somewhat less directly, petitioner in No. 623, in his *amicus* brief here (pp. 14 *ff*), makes the same concession as to the American woman who married an alien.

the act which Congress has specified as leading to a loss of nationality, and if that act has reasonably been so found by Congress, then the doing of the act results in loss of his United States nationality, whatever the internal feeling (or total absence of feeling) of the doer as to his adherence to American citizenship.

2. A primary argument made to support the basic postulate of the opposing briefs is that the Congressional power over expatriation is necessarily hobbled because it is not expressly spelled out in the Constitution, and must therefore be limited to helping the citizen to expatriate himself if he so desires. This contention was answered forty years ago in *Mackenzie* v. *Hare, supra,* upholding the validity of the expatriation (under the Act of March 2, 1907, 34 Stat. 1228, c. 2534) of a native-born woman upon her marrying an alien, even though she had no intent or desire to expatriate herself and never left the United States. The Court said (239 U. S. at 311):

> But there may be powers implied, necessary or incidental to the expressed powers. As a government, the United States is invested with all the attributes of sovereignty. As it has the character of nationality it has the powers of nationality, especially those which concern its relations and intercourse with other countries. We should hesitate long before limiting or embarrassing such powers.

The doctrine of implied powers in the field of foreign relations, thus firmly and pertinently enunciated in *Mackenzie,* is, of course, one of long standing and great breadth. See *e. g., United States* v. *Curtiss-*

Wright Corp., 299 U. S. 304, 318; *Burnet* v. *Brooks*, 288 U. S. 378, 396; *Fong Yue Ting* v. *United States*, 149 U. S. 698, 705 *ff.* Cf. the Brief for the United States (pp. 32–35) in *United States* v. *Guy W. Capps, Inc.*, Oct. Term, 1954, No. 14. Other nations, it is undeniable, have the power to prescribe loss of nationality in appropriate cases, and this country must likewise have that general authority, unless (as is not the case) some specific constitutional provision forbids.[7] In addition to the authority inherent in this country as a nation, Congress may also call (in appropriate instances) upon various specific powers such as the war power, the power to raise and support armies, and the power over naturalization.

Though Congress did not legislate generally on the subject of loss-of-nationality during the 19th century—except to confirm the *right* of voluntary expatriation in the Act of July 27, 1868, 15 Stat. 223 (*infra*, pp. 23, 41) and to enact the deserter-draft evader Act of March 3, 1865, 13 Stat. 490 (*infra*, pp. 41 *ff*)[8]—the existence of general power in this area was assumed, particularly after the Civil War, in the presentation of various bills in Congress, and in suggestions by successive Presidents that legislation be

[7] The Necessary and Proper clause applies to this power as it does to all of the powers of Congress. See Comment, 64 Yale L. J. 1164, 1185–1186.

[8] Cases under the 1865 deserter-draft evader statute, and Congressional treatment of that act, recognize it as an expatriation enactment. See *infra*, pp. 42–44.

adopted. Treaties also provided for loss of nationality as, for instance, by return of a naturalized American to his former country. The Citizenship Board of 1906[9] appeared to have no doubt as to Congressional authority, nor did the Congress which passed the expatriation Act of March 2, 1907 (involved in the *Mackenzie* case).

Mrs. Mackenzie did raise a fundamental challenge in 1915, but the power of the United States, as a nation, to fix the conditions of loss of nationality was not seriously questioned after the *Mackenzie* decision until a relatively short time ago.[10] The power was recognized by the Cabinet Committee which supervised the drafting of the proposed nationality code which ultimately became the Nationality Act of 1940, as well as by the Congress which enacted that statute. The matter of expatriation was under study, together with other aspects of nationality, in the Departments of State, Justice, and Labor from April 1933 until 1938. See Executive Order No. 6115 (April 25, 1933). In 1938, the President transmitted to Congress a Report on the Revision and Codification of the Nationality Laws of the United States, together with a code, prepared by the Secretaries of State (Secretary Hull)

[9] On the Citizenship Board of 1906, see *infra*, p. 32.

[10] The first published suggestion of invalidity of which we are aware came in the opinions of *Kiyokuro Okimura* v. *Acheson* and *Hisao Murata* v. *Acheson*, 99 F. Supp. 587 and 591 (D. Haw.), discussed *infra*, pp. 27–29. These decisions were rendered on September 12, 1951.

and Labor (Secretary Perkins), and the Attorney General (Attorney General Cummings). (See the Hearings before the House Committee on Immigration and Naturalization, 76th Cong., 1st sess., on H. R. 6127, pp. 405, *et seq.*, for the text of the report and the proposed code.) This Cabinet Committee recommended the enactment of most of the provisions of Section 401 of the 1940 Act, including three of those under attack in these cases.

The Congressional power was also recognized in *Savorgnan* v. *United States,* 338 U. S. 491, in which this Court upheld the expatriation of a native-born citizen as against her contention that she did not intend to renounce her citizenship by obtaining Italian citizenship while in the United States and then residing abroad. In *Perkins* v. *Elg,* 307 U. S. 325, the Court, in sustaining a claim of retention of citizenship, likewise recognized the power to expatriate, stating (307 U. S, at 329):

> [C]itizenship [at birth] must be deemed to continue unless she has been deprived of it through the operation of *a treaty or congressional enactment* or by her voluntary action in conformity with applicable legal principles. [Emphasis added.]

And again, at p. 334:

> To cause a loss of that citizenship *in the absence of treaty or statute having that effect,* there must be voluntary action and such action cannot be attributed to an infant whose removal to another country is beyond his control and who during minority is incapable of a binding choice. [Emphasis added.]

See, also, *Kawakita* v. *United States*, 343 U. S. 717, 727–730; *Mandoli* v. *Acheson*, 344 U. S. 133, 136–137, 139, and (dissent) 140.

The lower courts and the administrative authorities have long proceeded upon the basis of the existence of the power. Thus, the loss of nationality by reason of a stay in a foreign country to evade military service has been affirmed in *Gonzales* v. *Landon*, 215 F. 2d 955 (C. A. 9), reversed on other grounds, 350 U. S. 920; *Vidales* v. *Brownell*, 217 F. 2d 136 (C. A. 9); *Mendoza-Martinez* v. *Mackey*, 238 F. 2d 239 (C. A. 9), pending on petition for certiorari, this Term, No. 623; and see *In the Matter of A–H–*, 2 I. & N. Dec. 390, 395–396, 400. Desertion in time of war has been sustained as a basis of loss of nationality over a long period of time (see *infra*, pp. 41 *ff*), and most recently by the Second Circuit in *Trop* v. *Dulles*, pending on certiorari, No. 710, this Term; for an administrative application of the provision, see *In the Matter of H–*, 4 I. & N. Dec. 540.

Numerous decisions have sustained loss of nationality by voting in a foreign country. *E. g.*, *Acheson* v. *Wohlmuth*, 196 F. 2d 866, 871 (C. A. D. C.), certiorari denied, 344 U. S. 833; *Acheson* v. *Mariko Kuniyuki*, 189 F. 2d 741, 744 (C. A. 9), 190 F. 2d 897 (C. A. 9), certiorari denied, 342 U. S. 942; *Miranda* v. *Clark*, 180 F. 2d 257, 259 (C. A. 9) (in which the court stated that the statutory provisions "bind the courts unless it can be said that they are clearly unconstitutional, a conclusion without rational foundation"). In *Scavone* v. *Acheson*, 103 F. Supp. 59, 61 (S. D. N. Y.),

the citizen spent most of her life in a "tiny rural area" with "little schooling" but was nevertheless subjected to the consequence of her act in voting in a single foreign election; in *Kasumi Nakashima* v. *Acheson*, 98 F. Supp. 11, 12 (S. D. Cal.), the motivation to cooperate with the United States was similarly insufficient to avert loss of nationality.

Service in a foreign army has likewise often been sustained as a proper basis for loss of nationality. *E. g., Bauer* v. *Clark*, 161 F. 2d 397, 404 (C. A. 7), certiorari denied, 332 U. S. 839; *Nishikawa* v. *Dulles*, 235 F. 2d 135, 141 (C. A. 9), pending on certiorari, this Term, No. 415; *Minoru Hamamoto* v. *Acheson*, 98 F. Supp. 904, 905 (S. D. Cal.); *Federici* v. *Miller*, 99 F. Supp. 962, 963–964 (W. D. Pa.). *Revedin* v. *Acheson*, 194 F. 2d 482 (C. A. 2), certiorari denied, 344 U. S. 820, like *Savorgnan, supra,* upheld the expatriation of an American woman who acquired Italian nationality, despite her lack of intent to give up her United States citizenship.

Noteworthy, also, is the decision in *Lapides* v. *Clark*, 176 F. 2d 619 (C. A. D. C.), certiorari denied, 338 U. S. 860, which affirmed as a basis for loss of nationality residence abroad for five years by a naturalized citizen of the United States. The dissent of Judge Edgerton, directed solely against the differentiation between native-born and naturalized citizens, gave express recognition that, "Congress may expatriate citizens on reasonable grounds. No doubt these may include five years' residence abroad."

3. Petitioner's reliance (Pet. Br. 14–15) upon *United States* v. *Wong Kim Ark*, 169 U. S. 649, in this

connection, is misplaced. That case held only that the provision of the Fourteenth Amendment that all persons born in the United States are citizens of the United States precluded any power in Congress to prevent some of the persons so born in the United States from being citizens at birth, *e. g.*, persons born of Chinese parents. Even in that decision, however, the Court recognized loss of nationality on the basis of subsequent acts of the citizen, by quoting the pertinent pleading (169 U. S. at 705) "that he has never done or committed any act or thing to exclude him [from the United States]." That Congress cannot change the effect of birth as conferring citizenship does not mean that Congress may not specify the voluntary adult action which will result in subsequent loss of nationality. See *Perkins* v. *Elg*, 307 U. S. 325, 334. The Fourteenth Amendment does not, in terms, forbid the enactment of expatriation legislation, nor does it imply that Congress is powerless in this field. The purposes of the provision were simply to confirm the citizenship of Negroes and to put into constitutional form the long-standing position of this country, in accord with the *jus soli*, that persons born on American soil are Americans. See 169 U. S. at 675–6, 687–8, 693. Appropriate expatriation legislation does not conflict with those objectives, or with any other provision of the Consitution."

[11] Petitioners constantly stress the "constitutional" right of the native-born American to his citizenship—forgetting that the Fourteenth Amendment declares that "All persons born *or naturalized* in the United States, and subject to the jurisdiction thereof, are citizens of the United States * * *." (Emphasis added.) We mention this in order to point out that

4. (*a*). Petitioners' assertion of the completely controlling effect of the citizen's desire to retain his citizenship doubtless stems from an incorrect equation of all loss-of-nationality with the *right* of persons voluntarily to put off United States nationality. In the course of our development as a nation, the *right* of the individual to renounce his nationality was initially emphasized because we are a nation of immigrants and our chief interest, in the first part of the 19th century, was to secure from other countries recognition of the single status of our naturalized citizens as United States nationals, freed from all legal ties, duties, or allegiance to the states of their original citizenship. See *Savorgnan* v. *United States*, 338 U. S. 491, 497–499; *Mandoli* v. *Acheson*, 344 U. S. 133, 135–6.[12]

But Congress has also been increasingly concerned

---

the naturalized citizen also has a "constitutional" right to his citizenship, and that petitioners' arguments must therefore affect the special expatriation provisions applicable to naturalized citizens (*e. g.*, Sections 404, *et seq.*, of the 1940 Act)—at least insofar as those provisions came into operation after the grant of naturalization to the particular person. So far as petitioners' theory is concerned, there is no difference between the status of the native-born citizen and of the naturalized citizen: all the expatriation provisions must fall.

[12] The earlier development of the general American doctrine of expatriation, with its vicissitudes before the 1850's, is described in III Moore, *Digest of International Law*, Secs. 431–469; III Hackworth, *Digest of International Law*, Secs. 242–250; II Hyde, *International Law Chiefly as Interpreted and Applied in the United States* (1945 ed.), Secs. 376–387A; Moore, *The Principles of American Diplomacy*, ch. VII, reported in IV Collected Papers of John Bassett Moore, pp. 388–406; Flournoy, *Naturalization and Expatriation* (1922), 31 Yale L. J. 702, 848; Tsiang, *The Question of Expatriation in America prior to 1907* (1942), Johns Hopkins University

with the other side of the coin—with those Americans who, by their voluntary acts, have shown that they should no longer be citizens of the United States even if they desire to remain such. During the Civil War, Congress forfeited the rights of citizenship of deserters and draft-evaders,[13] and in the Citizenship Act of 1907, 34 Stat. 1228, Congress, after considerable study, enacted general legislation with respect to loss of nationality by reason of various types of acts.[14] From 1940 to 1952, the expatriation provisions were set forth in Section 401 of the Nationality Act of 1940 (*infra*, pp. 59–61); since December 1952, the controlling provisions have been those of Sections 349–357 of the Immigration and Nationality Act of 1952, 66 Stat. 163, 8 U. S. C. 1481–1489 (added to by the Act of Sept. 3, 1954, 68 Stat. 1146).[15]

As we have already pointed out (*supra*, pp. 13–15), in applying and sustaining these provisions, the courts

---

Studies in Historical and Political Science, Series LX, No. 3; Brief for the Petitioners, pp. 20–27, in *Perkins* v. *Elg*, Oct. Term, 1938, No. 454; Brief for the Respondents, pp. 29 *ff.*, in *Savorgnan* v. *United States*, Oct. Term, 1949, No. 48; Brief for the Respondent, pp. 22 *ff.*, in *Mandoli* v. *Acheson*, Oct. Term, 1952, No. 15.

[13] This statute is discussed in detail, *infra*, pp. 41 *ff.*

[14] *I. e.*, obtaining naturalization in a foreign country; taking an oath of allegiance to a foreign state; an American woman's marrying a foreigner.

[15] The Act of July 27, 1868, 15 Stat. 223, Rev. Stat. § 1999, 8 U. S. C. 800, gave legislative recognition to the "right of expatriation" as a "natural and inherent right of all people," but did not otherwise define what constituted expatriation. Until the 1907 Act was adopted, there was no general Congressional measure prescribing specific modes in which expatriation would be effected—aside from the deserter and draft-evader statute.

have held it immaterial that the person may desire and intend to retain his citizenship in this country. *Mackenzie* v. *Hare,* 239 U. S. 299, was such a ruling. The loss of citizenship was simply the result of the citizen's voluntary act in marrying the alien. As the Court said, 239 U. S. at 312, her act was "as voluntary and distinctive as expatriation and its consequence must be considered as elected." [16]

In *Savorgnan* v. *United States,* 338 U. S. 491, the Court expressly ruled that the subjective intent of the citizen not to lose United States nationality could not overcome the effect of her voluntary action in acquiring Italian nationality. It characterized the expatriating act as objective (338 U. S. at 497, 499) and declared, at p. 500:

> There is nothing, however, in the Act of 1907 that implies a congressional intent that, after an American citizen has performed an overt act which spells expatriation under the wording of the statute, he, nevertheless, can preserve for himself a duality of citizenship by showing his intent or understanding to have been contrary to the usual legal consequences of such an act.[17]

---

[16] It is to be noted that it is of no significance that Mrs. Mackenzie may, in normal course, have acquired her husband's British citizenship. Her complaint, as here, was against *the loss of United States citizenship,* for which British citizenship clearly was no recompense, especially since she resided and desired to continue residence in California.

[17] Here, too, petitioner's effort to explain away the decision upon the ground that Mrs. Savorgnan at least had another nationality is unavailing. The essence, in *Savorgnan* as in *Mackenzie,* was the desire, irrespective of dual-nationality, to retain *United States* citizenship. See also *infra,* pp. 29–33.

And in a footnote the Court further observed (338 U. S. at 501):

> In § 401 of the Act of 1940, Congress added a number of *per se* acts of expatriation. These included, among others, entering the armed forces of a foreign state, accepting office in a foreign state to which only nationals of such state were eligible, and voting in a political election of a foreign state. Lack of intent to abandon American citizenship certainly could not offset any of these. * * *

In *Kawakita* v. *United States,* 343 U. S. 717, 721–730, the Court and both parties assumed that Kawakita would have been expatriated if he had committed one of the statutory acts of expatriation, regardless of the jury's finding that he never intended to renounce American citizenship (see p. 732). Similarly, in *Mandoli* v. *Acheson,* 344 U. S. 133, it was immaterial whether Mandoli thought he was an American or an Italian.

In the earlier lower court case of *Ex parte Griffin,* 237 Fed. 445, 453 (N. D. N. Y.), it was said: "If it be the natural and inherent right of a citizen to expatriate himself or herself, it would seem that the government should have the right to declare that the doing of acts by the citizen which are inconsistent with the discharge of his duties as such citizen to his government, accompanied by a departure from its jurisdiction, constitute expatriation—abandonment and renunciation of citizenship." See also *Revedin* v. *Acheson,* 194 F. 2d 482, 484 (C. A. 2), certiorari denied, 344 U. S. 820 ("She cannot escape [the provisions'] effect merely because she did not intend to

be bound by them or because she kept herself insulated from the significance of free and conscious acts for which she must be held responsible"). The other cases cited *supra*, pp. 19–20, have also found loss of nationality by the doing of specified acts, regardless of the subjective purpose or intent of the citizen.[18]

(*b*). In this connection, petitioners have misinterpreted decisions in which the courts have held that it was the intent of Congress that the expatriating act should be a voluntary one. *E. g., Perkins* v. *Elg*, 307 U. S. 325, 334; *Acheson* v. *Macuza*, 202 F. 2d 453, 457 (C. A. D. C.); *Dos Reis* v. *Nicolls*, 161 F. 2d 860 (C. A. 1). These rulings all concern voluntariness in the performance of the specific conduct designated by Congress as an expatriating act (see the Government's brief in No. 415, this Term), and not voluntariness of expatriation in the sense of a deliberate choice to give up American nationality. There is, of course, a vital distinction between the two concepts. An act may be done voluntarily—such as the marriage in *Mackenzie* v. *Hare*, *supra*, or the acquisition of Italian nationality and residence in *Savorgnan*, *supra*, or using a foreign

[18] The Government has heretofore urged that the acts listed in Section 401 of the Nationality Act of 1940 are the exclusive means of losing American nationality. See Brief for the United States, *Kawakita* v. *United States*, No. 570, Oct. Term, 1951, at pp. 38–44, and Brief for the Respondent, *Mandoli* v. *Acheson*, No. 15, Oct. Term, 1952, at pp. 68–80, 86–88. The Court has found it unnecessary to pass upon this contention. See *Kawakita* v. *United States*, 343 U. S. 717, 730–732; *Mandoli* v. *Acheson*, 344 U. S. 133, 139. In reserving the question, the Court, we assume, contemplated that there might be other means of exercising the *right* of expatriation by an individual who *did* desire to renounce his American allegiance.

country as a means of evading wartime military service, as in this case and in No. 623, or voting in a foreign election, as in this case, or serving in a foreign army, as in No. 415, or deserting in time of war, as in No. 710—but still without subjective or personal intent to renounce United States nationality. Indeed, the individual's disregard of the damaging effect of his conduct upon the United States is likely to be accompanied by an equal disregard of, and indeed opposition to, the commensurate loss of the benefits of American citizenship. Congress has recognized that the performance of the act of expatriation must be voluntary, but it has not provided that the individual must know that he is giving up his citizenship, or that he must intend to do so.

So here, if petitioner's staying out of the country to avoid military service and his voting in a foreign country were not his voluntary acts, he would not be within Sections 401 (e) and (j). But when he has voluntarily remained out of this country for the purpose of evading military service, and has voted in the foreign state, it becomes immaterial whether or not he intended thereby to renounce his American citizenship or whether he even knew that his act would result in loss of American citizenship. It is the intentional doing of the act which results in the loss of nationality.

5. Great stress has sometimes been laid (see, *e. g.*, Pet. Br. in No. 415, pp. 46–48; *amicus* brief of Francisco Mendoza-Martinez, petitioner in No. 623, pp. 12, 20a–22a) upon a group of rulings by Chief Judge McLaughlin in the District Court for the Dis-

trict of Hawaii, voiding loss-of-nationality provisions (subsections (c), (d), and (e) of Section 401 of the Nationality Act of 1940, *infra*, p. 60), concerning United States nationals who serve in the army of another nation of which they are also nationals, accept office in such a nation, or vote in foreign political elections—on the ground that Congress can do no more than implement the citizen's own renunciation of citizenship. The Government appealed the first two of these decisions (*Kiyokuro Okimura* v. *Acheson*, 99 F. Supp. 587, and *Hisao Murata* v. *Acheson*, 99 F. Supp. 591), but this Court remanded (342 U. S. 899, 900) for findings as to the circumstances under which the claimed citizens had performed their services in the Japanese army or voted in Japanese elections. Upon remand, the judge, while finding no "legal duress," made clear findings of outright compulsion. 111 F. Supp. 303, 305–306. Since these findings of coercion were entirely comparable to findings made in a large number of other Japanese-American expatriation cases in Hawaii and the federal district courts on the West Coast which the Government had not appealed, the Government sought no review of the ultimate holding in these two Hawaiian cases. Similarly, in the other cases in which Judge McLaughlin has invalidated provisions of Section 401, the Government has not appealed to this Court because (a) in each instance the record or findings revealed duress or coercion or some other infirmity of the type which has led the other district judges trying this class of Japanese-American expatriation case to hold—without invalidating the statute—that expatriation did

not occur;[19] and (b) the Ninth Circuit, which includes the District of Hawaii, has already sustained the validity of these provisions of the statute. See *Miranda* v. *Clark*, 180 F. 2d 257, 259 (C. A. 9); *Acheson* v. *Mariko Kuniyuki*, 189 F. 2d 741, 744 (C. A. 9), certiorari denied, 342 U. S. 942; *Gonzales* v. *Landon*, 215 F. 2d 955 (C. A. 9), reversed on other grounds, 350 U. S. 920; *Vidales* v. *Brownell*, 217 F. 2d 136, 138 (C. A. 9); *Nishikawa* v. *Dulles*, 235 F. 2d 135, 141 (C. A. 9), No. 415, this Term; cf. *Mendoza-Martinez* v. *Mackay*, 238 F. 2d 239 (C. A. 9), No. 623, this Term.

B. CONGRESS CAN DECLARE THAT CONDUCT SHALL RESULT IN LOSS OF NATIONALITY WHERE SUCH CONDUCT MAY LEAD TO INTERNATIONAL EMBROILMENT OR ADVERSELY AFFECT THE CARDINAL ELEMENTS OF ALLEGIANCE TO THE UNITED STATES

Congressional power to fix the conditions for loss of nationality—regardless of the citizen's subjective intent to renounce or give up his American citizenship—plainly exists, as we have just shown, but it cannot be exercised arbitrarily or unreasonably. The Due Process Clause of the Fifth Amendment would condemn such use of the power. What, then, are the considerations which must govern action by Congress in this field?

1. It has been urged, in the first place, that, at most, the loss of nationality can result only from acts which evince the actual acceptance of some other nationality, such as naturalization in a foreign state.

[19] The Government has not appealed these decisions when adequately based on duress or a comparable nonconstitutional ground.

But this is only a restatement of the argument that Congress can do no more than recognize the conscious desire of a citizen to change nationality; it makes action by Congress dependent on an individual citizen's preference of nationality, although evidenced by acts rather than a subjective declaration of intent. As stated above (*supra*, pp. 14 *ff*), we find no such limitation on the authority of Congress to exercise the power inherent in sovereignty to determine what acts shall result in the loss of nationality. And while the actual statutes which have come before the courts have, for the most part, concerned situations involving some relationship to another country, it is significant that the courts, in upholding the statutes, have spoken, not in terms of the citizen's acceptance of some other nationality, but of the sovereign national need to determine questions which affect its international relations and its citizenship.

Here, too, the basic case is *Mackenzie* v. *Hare*, 239 U. S. 299, involving a woman's loss of nationality by marriage to a foreigner. (See *supra*, pp. 14, 15, 24). It is true that marriage had had a past legal history—albeit a confused one—of relationship to citizenship,[20]

[20] This relationship was not at all a firm one at the time of the *Mackenzie* decision, in 1915. While the Nineteenth Amendment was not ratified until August 26, 1920, the emancipation of married women had progressed considerably prior to that date. In California, where the *Mackenzie* case arose, the first constitution guaranteed the right of married women to own their separate property (Cal. Constitution of 1849, Art. XI, Sec. 14; see also Cal. Constitution of 1879, Art XX, Sec. 8, and California Civil Code, Sec. 157). In 1872, a married woman in California was enabled to contract, either with her husband or with any other person (Cal. Civ. Code, Sec. 158; *Goad* v. *Moulton*, 67 Cal.

but the Court sustained Mrs. Mackenzie's expatriation, not because of that relationship, but because of the national need for harmonious and orderly international relations which supported the legislation. The Court said, at p. 316:

> [T]he legislation was urged by conditions of national moment. And this is an answer to the apprehension of counsel that our construction of the legislation will make every act, though lawful, as marriage, of course, is, a renunciation of citizenship. * * * This is no arbitrary exercise of government. It is one which, regarding the international aspects, judicial opinion has taken for granted would not only be valid but demanded. *It is the conception of the legislation under review that such an act may bring the Government into embarrassments and, it may be, into controversies.* [Emphasis added.]

536, 8 Pac. 63 (1885); *Marlow* v. *Barlow*, 53 Cal. 456 (1879)) and to convey her separate property (Cal. Civ. Code, Sec. 162; *Marlow* v. *Barlow*, *supra*). By 1915, married women in California were solely liable for their torts (Cal. Civ. Code, Sec. 171a, added in 1913), and crimes, except for misdemeanors committed under the threat, command or coercion of their spouses (Cal. Pen. Code, Sec. 26, enacted 1872), and were allowed to vote (Constitution of 1879, Art. II, Sec. 1, Amendment of 1911). (Indeed, the *Mackenzie* case arose because Mrs. Mackenzie had been refused registration as a voter on the ground that she had lost her United States citizenship (239 U. S. at p. 306)). This Court itself noted that there had been "much relaxation" of the principle of "identity of husband and wife" (239 U. S. at p. 311). The Court's purpose in referring to those facets of identity which still remained was to point out that the legislation was "urged by conditions of national moment," which might involve "national complications" and "bring the Government into embarrassments" (239 U. S. at p. 312), and thereby to show that the statute was not arbitrary or unreasonable.

Thus, the Court considered expatriation as dependent upon its relationship to "conditions of national moment," not upon its connection with the citizen's own choice of nationality or upon his acceptance of another citizenship.

Also, the taking of an oath of allegiance to a foreign state—made an act of expatriation by Section 2 of the Citizenship Act of March 2, 1907, 34 Stat. 1228—does not always, or even usually, entail the acquisition of the nationality of the other state.[21] But it was specifically made expatriating in 1907, on the recommendation of the Citizenship Board of 1906 (see H. Doc. No. 326, 59th Cong., 2d sess., pp. 3, 23),[22] and it had often been considered by the State Department to have that effect. See III Moore, *Digest of International Law* (1906), Sec. 468, pp. 718–730.

Similarly, mere residence abroad for five years on the part of a naturalized citizen, particularly in a country not of his original allegiance, does not evidence an intent to adopt a nationality other than United States nationality. Yet the national interest opposed to prolonged stays abroad by citizens formerly bearing foreign allegiance was held to be a suffi-

[21] Most frequently, the taking of such an oath has been required in connection with service in the army, whether as a volunteer or as a conscript. See *Savorgnan* v. *United States*, 338 U. S. 491, 501, fn. 17.

[22] The Board was appointed by Secretary of State Root, pursuant to a suggestion from the House Committee on Foreign Affairs, and consisted of Solicitor James Brown Scott, the Minister to the Netherlands, and the Chief of the Passport Bureau of the State Department. The 1907 Act was largely based on its recommendations. See H. Rep. Nos. 4784, 59th Cong., 1st sess., and 6431, 59th Cong., 2d sess., p. 1.

cient basis for sustaining the power of Congress to enact the provision. *Lapides* v. *Clark*, 176 F. 2d 619, 620–621 (C. A. D. C.), certiorari denied, 338 U. S. 860 (*supra*, p. 20).

Historically, then, the statutory acts of expatriation have gone beyond those which indicate acquisition of another nationality or the deliberate choice of another allegiance over that to the United States. There is no basis for restricting the authority of Congress to that limited area.

2. But, as the foregoing discussion shows, expatriation for foreign naturalization does indicate one signal factor which Congress has properly taken into account—the possibility that "an act [of a citizen] may bring the Government into [foreign] embarrassments and, it may be, into controversies" (*Mackenzie, supra*, 239 U. S. at 316). Conduct by an American such as taking an allegiance oath to another country (Section 401 (b) of the 1940 Act), or serving in its army as its own national (Section 401 (c)), or working for its government as one of its nationals (Section 401 (d)), or the commission of an act of treason (Section 401 (h)), and even voting in a foreign political election (Section 401 (e)), may very well lead to embroilment or conflict between the foreign state and this country over the duties and obligations of the American who has performed such acts. Since the other nation has an obvious claim upon him, as does this country, the possibility of serious controversy is ever-present. As the Citizenship Board (see *supra*, p. 32) put it in 1906: "No man should be permitted deliberately to place himself in a position where his

services may be claimed by more than one government and his allegiance be due to more than one." H. Doc. No. 326, 59th Cong., 2d sess., p. 23.

3. There is other conduct not so directly entailing possible foreign conflict but which is nevertheless so inconsistent with the gravest obligations of American citizenship that Congress can provide that it leads to denationalization. For instance, and wholly apart from the international conflict involved in his conduct, a citizen who heads a foreign army seeking to overthrow the forces of the United States—who commits the gravest act of treason—thereby shows a total lack of allegiance to this country, a total subversion of his duties, obligations, and attachments as an American.

There are, of course, lesser acts which reveal a lack of allegiance to, or support of, this country, or an inappropriate preference for another nation. For instance, voluntary participation in the governmental affairs of another nation can in certain circumstances be said, even apart from the possibility of international controversy, to represent too intimate a connection with the other state and too great a diminution of the citizen's primary obligation to the United States.

The only generalization we would offer on this score is that the act of expatriation must have such a close relation to the cardinal elements of United States nationality and allegiance that it is reasonable, with due consideration for the "cherished status" of American citizenship (*Knauer* v. *United States*, 328 U. S. 654, 658), for Congress to impose loss of nationality as a result of the commission of the act.

The instant petitioner himself suggests (Pet. Br. 13) the somewhat different test of whether the "nation's independence and security *might* be jeopardized" (emphasis added) by permitting an American to do the designated act and still remain a citizen of this country. Other general criteria can be developed. But whatever the standard, Congress has the basic responsibility of evaluating the pertinent factors and considerations; judicial review is necessarily confined to narrow limits. And the delineation of the outer boundaries must be left, in this field as in so many others, for the future as it unfolds. Since the alarm expressed by petitioners (and those who support their position) is not truly directed against the statute before the Court but rather against hypothetical provisions which have not even attained the level of responsible suggestions, there is no present need to wrestle with the asser d potential dangers which concern petitioners.

4. In his attack on our position that Congress has the power to enact reasonable expatriation legislation, the present petitioner refers to the injustices and difficulties of "statelessness" (*e. g.*, Pet. Br. 14).[23] We may point out, in the first place, that the petitioners in Nos. 415, 572, and 623, each appear to be dual-nationals, and their loss of United States citizenship will leave them with their other nationality (Japanese or Mexican) which they each have claimed at one time or another. There is no reason to believe that the

[23] See also the petitioner's brief, and the *amicus curiae* brief of the American Jewish Congress, in No. 710.

present petitioner (in No. 572), who lived in Mexico for over 30 years and whose wife and seven children continue to live there, will be unable to live in Mexico.

Secondly, it should be noted that certain of the acts of expatriation defined in Section 401 of the 1940 Act—obtaining foreign naturalization (subsection (a)), entering a foreign army (subsection (c)),[24] and taking a foreign governmental post (subsection(d))—expressly depend upon the existence of dual-nationality, and therefore cannot involve statelessness. On the other hand, certain provisions of Section 401—formally renouncing American nationality abroad (subsection (f)), and formally renouncing citizenship while in the United States (subsection (i))—plainly contemplate a deliberate, voluntary, choice by the individual of statelessness.[25]

Statelessness is, indeed, an international problem in the modern day. But it is a problem to be solved by the political branches of the Government, if they can and desire to do so; it is not for the courts to cure by invalidating Congressional legislation which could lead in some circumstances to statelessness. The undesirability of that status has not attained the level of a constitutional principle to be imposed on Congress by this Court.

5. It is also well to point out that there is not really involved in these cases any question as to the

[24] This is the provision involved in the *Nishikawa* case, No. 415.

[25] Cf. the well-known instance of Garry Davis.

banishment or deportation of expatriated native-born persons who are living in the United States at the time of their loss of nationality. Congress has not attempted expressly to deport such persons, and the present immigration laws would not normally cover them unless they left the country and then sought to reenter. The validity of legislation requiring the deportation of such denationalized native-born individuals is therefore not before the Court, and need not now be taken into account. There may well be problems inherent in such deportation legislation which differ from, and go beyond, those involved in the constitutionality of the various loss-of-nationality provisions of Section 401. Those problems should be left to the proper case, if and when it arises.

To the extent that the present petitioners may be deportable if they have lost their American citizenship, their deportability arises, under the general immigration laws, because they became expatriated while outside the United States and their last entries were therefore as aliens and not as citizens.[26] If these entries were improper under the general law, the petitioners are subject to deportation (or to exclusion if they are seeking entry and cannot qualify for entry as an alien). But they are not being banished from their homes under a deportation law directed against persons expatriated while in this country.

---

[26] Perez (in No. 572) and Mendoza-Martinez (in No. 623) have lived most of their lives in a foreign country, and have been held to have become expatriated while in Mexico. Nishikawa (in No. 415) went to Japan in 1939, and, in the view of the courts below, lost his nationality while abroad.

II

CONGRESS HAS THE CONSTITUTIONAL POWER TO PROVIDE THAT UNITED STATES NATIONALITY IS LOST BY ONE WHO REMAINS OUTSIDE THE JURISDICTION OF THE UNITED STATES IN TIME OF WAR TO EVADE MILITARY SERVICE, BY ONE WHO VOTES IN A FOREIGN STATE, BY A DUAL-NATIONAL WHO SERVES IN THE ARMED FORCES OF HIS OTHER NATION, AND BY A SERVICEMAN WHO IS CONVICTED OF DESERTION IN WARTIME

In Point I, *supra*, pp. 13–37, we have discussed, in general terms, the power of Congress to provide for loss of nationality, and the criteria by which its action is to be tested. In this Point, we discuss, in particular, each of the four subsections of Section 401 of the 1940 Act which is under attack in the present set of cases, and show that each is a reasonable requirement which Congress could adopt in its discretion.[27]

A. SECTION 401 (c)—SERVICE BY A DUAL-NATIONAL IN THE FORCES OF HIS OTHER STATE[28]

On this subsection, little need be added to the general argument in Point I, *supra*, pp. 29–37. There is an obvious possibility of conflict between the two nations over the military service of the dual-national. The classic problem with respect to expatriation in our history has been the call of an American to military duty by the country of his former or other nationality (*supra*, p. 22); we have long struggled to free our nationals from such demands. It cannot be invalid for Congress to do its share to maintain this principle

[27] We set out in Appendix B, *infra*, pp. 62–63, the Immigration and Naturalization Service figures for expatriations in recent years.

[28] This is the provision involved in the *Nishikawa* case, No. 415.

by providing that an American who chooses to serve shall thereafter have the single nationality of his other country.

In addition, Nishikawa's own case history[29] shows that an American who serves in the foreign army of his other nationality may be called upon to fight against this country and thus to traduce the most essential obligation of the citizen.[30]

B. SECTION 401 (e)—VOTING IN A FOREIGN POLITICAL ELECTION[31]

Since voting is one of the highest duties of a citizen, it normally connotes an intimate participation in the public affairs of the foreign country and a strong attachment to that state. Indeed, in most countries only nationals (or those who have indicated their intention to become nationals) can vote. The connection with foreign political processes and with foreign obligations is very close; a form of political allegiance to the other state is shown by the very act of voting. Congress could therefore reasonably declare that Americans who voted abroad should cease to be Americans.[32] Many may differ with the wisdom of

---

[29] See the Government's brief in No. 415, at pp. 5–6.

[30] For cases upholding and applying Section 401 (c), see *supra*, p. 20.

[31] This provision is involved in the present case, No. 572.

[32] The Cabinet Committee which proposed the Nationality Act of 1940 (see *supra*, pp. 17–18) said of its suggestion of expatriation for voting in a foreign political election (Hearings before the House Committee on Immigration and Naturalization, 76th Cong., 1st sess., on H. R. 6127, at p. 491):

"* * * Taking an active part in the political affairs of a foreign state by voting in a political election therein is believed to involve a political attachment and practical allegiance thereto which is inconsistent with continued allegiance to the United

that ultimate judgment—particularly as it leads in some cases to harsh results (see Pet. Br. herein, p. 21)[33]—but the choice was for Congress to make, and it did not exceed its authority in choosing.[34]

C. SUBSECTION (j)—REMAINING ABROAD TO EVADE MILITARY SERVICE[35]

By the standards discussed in Point I, a statute prescribing loss of nationality for one who remains out of the country to avoid military service is a reasonable exercise of the power of Congress. The problem of draft evaders who remain out of the country in a period of war or national emergency in order to avoid a fundamental obligation of citizen-

---

States, whether or not the person in question has or acquires the nationality of the foreign state. In any event it is not believed that an American national should be permitted to participate in the political affairs of a foreign state and at the same time retain his American nationality. The two facts would seem to be inconsistent with each other."

[33] Mrs. Shipley's speech (which this petitioner quotes (Pet. Br. 21)), suggesting that United States citizens voting in foreign countries may have done so to help this country or to obtain food rations, concerns, of course, the wisdom of the outright rule adopted by Congress, not its validity. We may also note that Mrs. Shipley's remarks fail to take account of the many lower court decisions which have held foreign voting not to be expatriating because done under duress—to obtain ration cards, or for some other overriding reason. As for voting in supposed assistance of American policies, the benefit in such voting is not to be judged by the citizen's own estimate of the best policy; Congress has enacted the firm policy that such participation in political affairs abroad should not be permitted. See fn. 32, *supra*.

[34] For cases upholding and applying Section 401 (e), see *supra*, pp. 19–20.

[35] This provision is involved in the present case, No. 572, and in *Mendoza-Martinez*, No. 623. In the latter case, it is the only act of expatriation charged.

ship—service in defense of the nation—is manifestly a serious one. It is rendered peculiarly grave by the fact that, in remaining out of the country, such persons put themselves out of the reach of ordinary criminal sanctions which apply to draft evaders within the country. Moreover, these men present a problem in international relations since, so far as other countries are concerned, they remain United States citizens, while, so far as this nation is concerned, they have rejected the obligations of citizenship.

1. Ever since the Civil War, the United States has felt the need for legislation of this type. This was true in 1865, even before the "right" of the citizen consciously to renounce nationality was spelled out in the Act of 1868.[36] Congress, by the Act of March 3, 1865, Section 21 (13 Stat. 490), provided for forfeiture of the rights of citizenship of deserters and enrolled draftees who departed from their district or from the United States with intent to avoid draft into the armed forces.[37] The statute operated even if the

[36] As noted above (p. 23, fn. 15), the Act of July 27, 1868, 15 Stat. 223, Rev. Stat. 1999, gave legislative recognition to the "right of expatriation" as a "natural and inherent right of all people", but did not define what constituted expatriation. It is interesting, though perhaps not too significant, that the 14th Amendment was declared by Congress to be a part of the Constitution on July 21, 1868, and officially promulgated by the Secretary of State on July 28, 1868, one day after enactment of the expatriation act.

[37] " * * *[A]ll persons who have deserted the military or naval services of the United States, who shall not return to said service, or report themselves to a provost-marshal within sixty days after the proclamation hereinafter mentioned, shall be deemed and taken to have voluntarily relinquished and

evader did not leave the jurisdiction of the United States.

Though this enactment refers to "rights of citizenship," rather than to citizenship itself, it has been treated as a loss-of-citizenship or loss-of-nationality statute. The Act specifically decrees that *alien* deserters and draft-evaders shall forfeit "their rights to become citizens" (see fn. 37, *supra,* pp. 41–42). The Revised Statutes included it under the title of "Citizenship" (Title XXV) (Rev. Stat. 1996, 1998) along with the 1868 expatriation statute (Rev. Stat. 1999) (fn. 36, *supra,* p. 41), and other provisions dealing with nationality.[38]

Administratively, the 1865 Act has likewise been

---

forfeited their rights of citizenship and their rights to become citizens; and such deserters shall be forever incapable of holding any office of trust or profit under the United States, or of exercising any rights of citizens thereof; and all persons who shall hereafter desert the military or naval service, and all persons who, being duly enrolled, shall depart the jurisdiction of the district in which he is enrolled, or go beyond the limits of the United States, with intent to avoid any draft into the military or naval service, duly ordered, shall be liable to the penalties of this section. * * *."

[38] These provisions show that Congress has often used the terms "rights of citizenship" and "citizenship" interchangeably. For instance, Rev. Stat. 1993, providing for citizenship of children born abroad of fathers who were Americans at the time of the child's birth goes on to say: "but the *rights of citizenship* shall not descend to children whose fathers never resided in the United States" (emphasis added). See *Weedin* v. *Chin Bow*, 274 U. S. 657. And the Expatriation Act of 1868 (*supra*, p. 41) itself says that "this Government has freely received emigrants from all nations, and invested them with the *rights of citizenship* * * *" (emphasis added). See also *Shelley* v. *United States*, 120 F. 2d 734, 735 (C. A. D. C.) (Act of July 2, 1940, 54 Stat. 715).

recognized as a loss-of-nationality statute. The Citizenship Board of 1906 (*supra*, p. 32) considered it a statutory provision for loss of citizenship. See H. Doc. No. 326, 59th Cong., 2d sess., p. 159. The State Department so construed it. See the remarks of Assistant Legal Adviser Flournoy at the hearings on the proposed Nationality Act of 1940 (Hearings before the House Committee on Immigration and Naturalization, 76th Cong., *supra*, at pp. 38, 132–133; cf. 186–187) and III Hackworth, *Digest of International Law* (1942), pp. 276–279. The Cabinet Committee which proposed the 1940 Nationality Act drew upon the 1865 statute as the parent of its suggestion as to expatriation for desertion (Hearings, *supra*, pp. 491–492). And when Attorney General Biddle proposed, in 1944, that Section 401 (j) be added to the 1940 Act, he mentioned that the comparable 1865 Act existed and was operative during World War I. See H. Rep. No. 1229, 78th Cong., 2d sess. (quoted, in part, *infra*, pp. 54–55). The few courts which have dealt with the 1865 Act seem also to have considered it as imposing loss of nationality, rather than some lesser disability. See *infra*, pp. 43–44.

2. The constitutionality of this 1865 Act was squarely and extensively considered and its validity upheld in *Gotcheus* v. *Matheson*, 58 Barb. 152, 155–160 (reversed on other grounds, 61 N. Y. 420), the court relying upon the constitutional powers of Congress with respect to the armed forces (Const. Art. 1, section 8, subd. 11 and 13). The validity of the Act (as well as its effectiveness as an expatriation statute) has been assumed in utterances of this Court, of other

courts, of Attorneys General, and of other administrative officials, dealing with questions under this legislation. See III Hackworth, *Digest of International Law* (1942), pp. 276–279; *Kurtz* v. *Moffitt*, 115 U. S. 487, 501 (in which the effectiveness of the loss of citizenship of deserters was considered dependent, apparently, only upon a court-martial's finding of the fact of desertion); *In re Carver*, 142 Fed. 623, 624 (C. C. D. Me.); *United States* v. *Snow*, 27 Fed. Cas. (No. 16,350) 1255, 1256, (E. D. Tenn.); *Cavender* v. *United States*, 8 C. Cls. 281, 282; *Citizenship of Grover Cleveland Bergdoll*, 39 Op. A. G. 303; *State* v. *Symonds*, 57 Me. 148, 150; *Holt* v. *Holt*, 59 Me. 464, 465–466; *Severance* v. *Healey*, 50 N. H. 448, 451; *McCafferty* v. *Guyer*, 59 Pa. 109, 110, 113, 119, 123; *Huber* v. *Reily*, 53 Pa. 112, 119.

3. The 1865 statute was amended in 1912 to make it inapplicable in times of peace (Act of August 22, 1912, 37 Stat. 356), and it remained in effect until repealed by Section 504 of the Nationality Act of 1940 (54 Stat. 1172).[39] Thus, the statute involved in the present case (Section 401 (j)) had behind it the support of many years of history. When it was enacted in 1944, at the suggestion of Attorney General Biddle, conditions incident to World War II revealed a special need to re-

[39] Section 401 (g) of the 1940 Act provided for loss of nationality by those deserting the armed forces in time of war (54 Stat. 1169). See *infra*, pp. 49–50, 60. This provision is apparently the reason for the total repeal of the 1865 Act which dealt both with deserters and with draft evaders. Provision with respect to draft evaders was resumed in 1944, see *infra*.

instate the provision with respect to draft-evaders."[40] H. Rep. No. 1229, 78th Cong., 2d sess., which accompanied the bill which became Section 401 (j), spells out the circumstances, at pp. 1–2.

> It is, of course, not known how many citizens or aliens have left the United States for the purpose of evading military service. The Department of Justice discovered that in the western district of Texas, in the vicinity of El Paso alone, there were over 800 draft delinquents recorded in the local Federal Bureau of Investigation office, born in this country and, therefore citizens, who had crossed the border into Mexico for the purpose of evading the draft, but with the expectation of returning to the United States to resume residence after the war.

And Attorney General Biddle's letter to the Congress stated (H. Rep. No. 1229, *supra*, at pp. 2–3):

> Persons who are unwilling to perform their duty to their country and abandon it during its time of need are much less worthy of citizenship than are persons who become expatriated on any of the existing grounds.

(See also *infra*, pp. 53–55).

The bill was passed unanimously by the House (90 Cong. Rec. 3256), favorably and unanimously reported by the Senate Committee (S. Rep. No. 1075,

---

[40] Petitioner apparently assumes (Pet. Br. 35) that comparable language as to "reinstatement" in the Government's brief in *Gonzales* v. *Landon* (O. T. 1955, No. 111, pp. 43, 61) indicated that the 1865 Act was identical with that of the instant Act. As pointed out, *inter alia*, in the Government's brief, pp. 58–59, the 1865 Act did not require leaving the jurisdiction. See also fn. 41, p. 46, *infra*.

78th Cong., 2d sess.) and then passed unanimously by the Senate (90 Cong. Rec. 7628–7629). The House then accepted a technical Senate amendment (90 Cong. Rec. 7725–7726), and the bill became law on September 27, 1944.[41]

4. Congress cannot be charged with unreasonable or arbitrary action in correcting the mistaken "expectation" of these draft-evaders "of returning to the United States to resume residence after the war" (*supra*, p. 45). When the nation is drafting servicemen in time of war or emergency, its need for military manpower is great and draft-evasion means a loss of needed men in a critical time. Draft-evasion also means inequality of service and inequality of sacrifice. And when the evader flees or remains abroad, he likewise evades the criminal sanctions which might otherwise prod him into performing his duty. In addition, there are possible international complications by reason of his residence abroad and refusal to fulfill his obligations to the United States; he may call upon the other country (of which he may also be a national) for aid, or he may resist compliance on the basis of its laws.[42] The domestic and international problems caused by such draft-evasion are plain.

---

[41] H. Rep. No. 1229, *supra*, p. 2, makes it clear that—unlike the 1865 Act (*supra*, pp. 41–42, 44)—no court conviction would be necessary for expatriation under Section 401 (j). First, there would be an administrative decision and, then, the individual would have access to the courts under the declaratory judgment procedure or, if necessary, by way of habeas corpus.

[42] For instance, in the *Gonzales* case, at the last Term, No. 111, the petitioner, a national of both Mexico and the United States, claimed that he was exempt from service here under an executive agreement of this country with Mexico.

On the other hand, readiness to serve in the country's armed forces in time of war or emergency has always been a cardinal element of United States citizenship, subject only to the most narrow exception of conscientious objection. The country's demand upon the citizen-soldier has been deemed the highest call to duty. This Court has characterized it as the "supreme and noble" duty (*Selective Draft Law Cases,* 245 U. S. 366, 390), and has recognized the primacy of military service, *when the citizen is called upon by Congress to perform it,* as *the* obligation of citizenship. Cf. *United States* v. *Schwimmer,* 279 U. S. 644; *United States* v. *Macintosh,* 283 U. S. 605; *United States* v. *Bland,* 283 U. S. 636; *In re Summers,* 325 U. S. 561, 572; *Girouard* v. *United States,* 328 U. S. 61, 64; *Falbo* v. *United States,* 320 U. S. 549; *Lichter* v. *United States;* 334 U. S. 742, 756–757.

When the draft-evader combines lurking abroad with his willful repudiation of this prime obligation, he cannot, with any regard to realities, challenge as arbitrary Congress' designation of such conduct as a dissolution of the ties of allegiance between him and the nation. For he has rejected his highest duty of citizenship and has also kept himself beyond the reach of the United States criminal sanctions designed to compel him to fulfill that duty. He is repudiating not only his military obligation but the entire governmental mechanism of the United States to which a citizen must submit; by putting himself beyond the reach of American sanctions and control, he is deliberately denying all the obligations of the

citizen and rejecting all authority of the United States over him.

He is also, in effect, choosing whatever protection he may obtain from another country, as against the protection of the United States and its correlative obligations. Petitioner may well enumerate *now* every possible theoretical hardship in having to live in another country, but the fact remains that he found neither such hardship nor, indeed, any but a preference for that dissociation from the United States when it was to his advantage so to dissociate himself. Obviously, there is great attractiveness in such a theoretical citizenship of which even the gravest obligations can be ignored, by flight or residence abroad, without risk to that citizenship. Petitioner's action is at least as much the outward manifestation of a preference for another country as the marriage to an alien (within the United States) involved in *Mackenzie* v. *Hare*, 239 U. S. 299, or the mere five-year foreign residence involved in *Lapides* v. *Clark*, 176 F. 2d 619 (C. A. D. C.), certiorari denied, 338 U. S. 860. It is certainly a more decided repudiation of allegiance to this nation than those two acts of expatriation.

In sum, one who intentionally chooses foreign residence in place of the military burden of citizenship, in time of war or emergency, is not in a position to charge that Congress has acted unreasonably in drawing conclusions from his choice. It was probably not by chance that the first federal expatriation statute was the 1865 Act dealing with deserters and draft-evaders. Repudiation of the citizen's duty to help

preserve the nation in time of war has for almost a century been regarded as cause for severing the cords of allegiance. This assumption is not invalid. Petitioner's unilateral concept of citizenship—all benefits and no obligations—is not imbedded either in our history or in the Constitution.[43]

D. SUBSECTION (g)—DESERTING THE ARMED FORCES [44]

For the most part, the history of Section 401 (g) is bound up with Section 401 (j), which we have just discussed (*supra*, pp. 40–49). Both provisions stem from the same 1865 Act, and they had the same history until 1940. The 1940 Act continued the desertion provision but omitted the draft-evasion portion (*supra*, p. 44).

The reasons which sustain Section 401 (j) also apply to the cognate Section 401 (g). Desertion in wartime, like draft-evasion, is a repudiation of the highest obligation of citizenship, and involves kindred considerations. Subsection (g) does differ from subsection (j) in that it omits the requirement of flight from this country or foreign residence; but the absence of this factor does not swing the balance against constitutionality. The special nature of the obligation which the citizen has repudiated combines with history to show that the taking away of nationality under the particular condition specified in Section 401 (g) involves a matter of "national moment" (see *Mackenzie*

[43] For the lower court cases on Section 401 (j), see *supra*, p. 19. See, also, Sharon, *Loss of Citizenship by Draft Dodgers*, 5 Monthly Review of the Immigration and Naturalization Service 97 (Feb. 1948).

[44] This provision is involved in the *Trop* case, No. 710.

v. *Hare,* 239 U. S. 299, 312), and is therefore within the constitutional power of Congress.

III

THE PROVISIONS OF THE EXPATRIATION STATUTE DO NOT INVOLVE CRIMINAL PROSECUTION OR PUNISHMENT

The present petitioner, as well as those in Nos. 415, 623, and 710, seeks to analogize the provisions of Section 401 to criminal prosecution, and thereby to assert unconstitutionality by reason of the failure of Congress to prescribe the full procedural requirements of criminal prosecution, or because expatriation is said to be a cruel and unusual punishment. This petitioner restricts his argument to Section 401 (j) (draft evasion) (see Pet. Br. herein, pp. 31–45),[45] but petitioner in No. 415 seems to suggest the same argument as to Section 401 (c) (service in the foreign army) (see Pet. Br. in No. 415, p. 42), and petitioner in No. 710 applies it to Section 401 (g) (desertion).[46] We submit that the point is not sound as applied to any of the four provisions involved in these cases.

A. In the first place, it is plain that these expatriation provisions are not inherently or exclusively penal in their nature; quite apart from any deterrent or punitive aspect of the statute, Congress *could* have believed that Americans who performed these acts

---

[45] He does *not* make the argument as to Section 401 (e) (voting), which is also involved in his case.

[46] The same general contention is made in Comment, 64 Yale L. J. 1164, and in Hurst, *Can Congress Take Away Citizenship?* 29 Rocky Mtn. L. Rev. 62 (reprinted in the appendix to the brief of *amicus* Mendoza-Martinez, petitioner in No. 623).

were no longer citizens in reality, or were unworthy of continued citizenship, or that continued American citizenship would entail difficulties with other countries. Certainly, the Court will not characterize these provisions as penal or punitive unless it is convinced, at the very least, that the dominant, if not the exclusive, concern of Congress was with punishment. But that is clearly not the case with Section 401 of the Nationality Act of 1940.

On the face of the enactment, the Congress made a distinction between penal provisions and its designation of certain acts as involving loss of nationality. The chapter entitled "LOSS OF NATIONALITY" followed, and was separated by only a single paragraph, from a whole section entitled "PENAL PROVISIONS" (54 Stat. 1163). See *Hel[illegible]ring* v. *Mitchell*, 303 U. S. 391, 404, with respect to the significance of the physical separation of non-penal provisions of a statute from the penal sanctions. Moreover, Section 401 is not couched in criminal or penal language, but rather in the normal terms used for describing non-penal consequences of specified conduct. And most of the acts of expatriation designated in the section do not involve conduct which is made criminal, either by the general federal criminal code or by other federal statutes.

The legislative history of Section 401 likewise shows that punishment was not dominant in the minds of Congress. In the Cabinet Committee report on the proposed bill (*supra*, pp. 17–18), there was clearly noted the distinction between penal provisions and

those under which loss of nationality was to "result from" the existence of stated facts. The Cabinet members said: "None of the various provisions in the [proposed Nationality] Code concerning loss of American nationality * * * is designed to be punitive or to interfere with freedom of action. They are merely intended to deprive persons of American nationality when such persons, by their own acts or inaction, show that their real attachment is to the foreign country and not to the United States" (Hearings before the House Committee on Immigration and Naturalization, 76th Cong., 1st sess., on H. R. 6127, at p. 409).[47] The Cabinet Committee's remarks in connection with its specific proposals on expatriation also indicated that it was concerned, not with punishment, but with the undesirable consequences of allowing Americans who committed these acts to continue as citizens of this country. See, *e. g.*, the comments as to foreign voting quoted in fn. 32, *supra*, pp. 39–40, and see the other comments set out in the Hearings, supra, at pp. 489 *ff*. There is nothing in the debates on these provisions which contradicts this non-penal emphasis on loss of nationality. See 86 Cong. Rec. 11942–11949 and the phrasing of S. Rep. No. 2150, 76th Cong., 3d sess., reprinted at 86 Cong. Rec. 12430–12431.

Specifically with respect to Section 401 (g) (the desertion provision), the Cabinet Committee, although recognizing that the precursor 1865 Act was (p. 492)

[47] This statement (along with others of the Cabinet Committee's comments) was referred to by Chairman Dickstein in the House discussions of the bill. 86 Cong. Rec. 11945–6.

"distinctly penal in character,"[48] referred to subsection (g) as "technically" "not a penal law," and proposed that the new expatriation provision should be adopted in addition to the penal sanctions for desertion.

Even more clearly, in 1944, at the time of the proposing of the additional provision with respect to a foreign stay for the purpose of draft-evasion (Section 401 (j)), the letter of Attorney General Biddle treated the contemplated provision for what it was—a designation of a loss of nationality rather than a punitive device. The letter, quoted in both the Senate and House committee reports, stated in pertinent part (H. Rep. No. 1229, pp. 2–3, S. Rep. No. 1075, 78th Cong., 2d sess.):

> Under existing law a national of the United States, whether by birth or by naturalization, becomes expatriated by operation of law if he (1) obtains naturalization in a foreign state; (2) takes an oath of allegiance to a foreign country; (3) serves in the armed forces of a foreign state if he thereby acquires the nationality of such foreign state; (4) accepts employment under a foreign state for which only

[48] Language concerning punishment in some of the decisions under the 1865 legislation rested upon the "avowed" language of that legislation, not found here, providing that the loss of nationality should be in addition to "the *other* lawful penalties" (emphasis added). *Huber* v. *Reily*, 53 Pa. 112, 114, 116, 118 (even in that case, two of the five judges denied that a penalty was involved; see *McCafferty* v. *Guyer*, 59 Pa. 109, 113–114, 124–128, Agnew, J.); *State* v. *Symonds*, 57 Me. 148, 150–152, and *Kurtz* v. *Moffitt*, 115 U. S. 487, 501, both of which merely followed *Huber*, *supra*, in dicta (*Symonds* involving sufficiency of an indictment, and *Kurtz* the propriety of an arrest by State officers for federal desertion).

nationals of such state are eligible; (5) votes in a political election in a foreign state or participates in an election or plebiscite to determine the sovereignty over foreign territory; (6) makes a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state; (7) deserts from the armed forces of the United States in time of war and is convicted thereof by a court martial; or (8) is convicted of treason (U. S. C., title 8, sec. 801). * * *

The files of this Department disclose that at the present time there are many citizens of the United States who have left this country for the purpose of escaping service in the armed forces. While such persons are liable to *prosecution* for violation of the Selective Service and Training Act of 1940, if and when they return to this country, it would seem proper that *in addition* they should lose their United States citizenship. *Persons who are unwilling to perform their duty to their country and abandon it during its time of need are much less worthy of citizenship than are persons who become expatriated on any of the existing grounds.*

* * * Any person who may be deemed to have become expatriated by operation of the foregoing provision, would be entitled to have his status determined by the courts pursuant to the above-mentioned section of the Nationality Act of 1940.

Adequate precedent exists for the suggested legislation in that during the First World War a statute was in force which provided for the expatriation of any person who went beyond the limits of the United States with intent to

> avoid any draft into the military or naval service (37 Stat. 356). * * * [Emphasis added.]

The distinction between the loss of nationality and "prosecution" or punishment is manifest in this proposal. The Attorney General was suggesting that draft-evaders who left the country (or remained abroad) for that purpose are not "worthy" of retaining citizenship—they have committed an act which is inconsistent with the highest obligation of citizenship and which shows that they no longer should be classed as citizens. These considered indications of purpose are not overborne by the occasional lapses, in floor discussion, into informal and less accurate language as to "penalties" or "punishment." In appraising the action of Congress for constitutional purposes, the looseness of common parlance should not be allowed to countervail the essential purpose and the true nature of what has been done.

2. Needless to say, punishment is not involved merely because a consequence ensues which is financially, emotionally, or otherwise objectionable or harmful to the person affected, and which may incidentally add to the deterrent effect of the prison terms or fines which may be imposed as true criminal penalties for the same conduct. The law knows many such disabilities or non-penal sanctions. See *e. g.*, *Helvering* v. *Mitchell,* 303 U. S. 391, 399–401; *United States ex rel. Marcus* v. *Hess,* 317 U. S. 537, 554–555; *Rex Trailer Co.* v. *United States,* 350 U. S. 148.[49] See also,

[49] These three cases involve, or refer to, the following non-penal sanctions:—(a) disbarment; (b) deportation of aliens;

e. g., 18 U. S. C. 202, 205, 206, 207, 216, 218, 281, 282, 290, 593, 1905, 1907, 1908, 1912, 1913, 2381, 2383, 2385, 2387. "The penal and remedial provisions are, therefore, distinct and cannot be confounded" (*O'Sullivan* v. *Felix*, 233 U. S. 318, 324). Civil regulations based on past conduct, even though the regulation is harmful to the individual, are not invalid, or transformed into punitive sanctions, where they represent a *bona fide* exercise of regulatory power to accomplish a non-penal purpose, and are not designed to inflict punishment. Disbarment is a prime example. Cf. *Sacher* v. *Association of the Bar*, 347 U. S. 388. Another instance is furnished by *Hawker* v. *New York*, 170 U. S. 189, which upheld a state law preventing a doctor from practicing medicine, because of a criminal conviction occurring years before the statute was passed. See, also, *Barsky* v. *Board of Regents*, 347 U. S. 442. *Garner* v. *Board of Public Works of Los Angeles*, 341 U. S. 716, made the same general ruling as to the refusal of public employment for prior subversive activity. See also *Adler* v. *Board of Education*, 342 U. S. 485; *United Public Workers* v. *Mitchell*, 330 U. S. 75; *American Communications Assn.* v. *Douds*, 339 U. S. 382. In short, there are many instances in which non-penal disabilities, disqualifications, or sanctions follow upon conduct which may also, in whole or in part, be criminal.

This Court's decisions with respect to aliens in-

(c) denial or revocation of a license to practice a profession, trade, etc.; (d) forfeiture of goods; (e) additional tax, customs, etc., penalties and "additions" to taxes or duties; and (f) statutory sums for liquidated damages for fraud.

volve, of course, considerations not applicable to citizens, but the holdings that deportation is not punishment (*e. g., Mahler* v. *Eby,* 264 U. S. 32, 39; *Harisiades* v. *Shaughnessy,* 342 U. S. 580, 594–595; *Galvan* v. *Press,* 347 U. S. 522, 531; *Marcello* v. *Bonds,* 349 U. S. 302, 314) well illustrate the principle that severe consequences of, or disabilities imposed on, specified conduct do not *per se* constitute punishment. In the case of aliens, the sanction of deportation is imposed because Congress is "seeking to rid the country of persons who had shown by their career that their continued presence here would not make for the safety or welfare of security" (*Mahler* v. *Eby, supra,* 264 U. S. at 39). In the present case, the disability of loss-of-nationality is imposed because Congress has determined that persons like these petitioners can no longer accurately be called American citizens. In both classes of cases—deportation and denationalization—the determination may result in serious hardship. But the deportation cases show that the severity of the resulting consequences is not indicative of punishment where those consequences have a relationship to a purpose independent of punishment, as is the case here in the aim to delineate those who shall no longer be treated as citizens of the United States. See, also, *Rex Trailer Company* v. *United States,* 350 U. S. 148, 150–151 (in which fixed amounts of $2,000 on every count of a fraud recovery proceeding by the Government were held to be liquidated damages and not

fines); *United States ex rel. Marcus* v. *Hess*, 317 U. S. 537, 549; and the cases cited *supra*, pp. 55–57.[50]

CONCLUSION

For these reasons, it is respectfully submitted that the judgment of the court below should be affirmed.

J. LEE RANKIN,
Solicitor General.

WARREN OLNEY, III,
Assistant Attorney General.

OSCAR H. DAVIS,
Assistant to the Solicitor General.

J. F. BISHOP,
Attorney.

APRIL 1957.

---

[50] Even if it were to be assumed that the expatriation provisions constitute criminal punishment, the further conclusions drawn by this petitioner and the petitioners in Nos. 415, 623, and 710, would not follow. Thus, the complaint of petitioner in No. 623, before the Court of Appeals, that his draft-evasion was subjected to double jeopardy (*Mendoza-Martinez* v. *Mackey*, 238 F. 2d 239 (C. A. 9), Appellant's Brief, pp. 22–24) overlooks the fact that the application of Section 401 (j) requires a different set of actions by the individual than in the case of simple draft-evasion (54 Stat. 894, 60 Stat. 341; 50 U. S. C. (1946 ed.) 311, App.). Here, there is a further and different factor—the stay in a foreign country—and there has been no prior jeopardy with respect to an offense involving that element. Similarly, the assumption that cruel and unusual punishment is involved in denationalization is contrary to the rationale of the holdings of this Court in *Wilkerson* v. *Utah*, 99 U. S. 130, 135, and *Francis* v. *Resweber*, 329 U. S. 459, 463. Cf. *Weems* v. *United States*, 217 U. S. 349. Moreover, the present petitioner apparently experienced no difficulty in remaining in Mexico and raising a family so long as it suited his purpose of evading military service.

APPENDIX A

The Nationality Act of 1940 (54 Stat. 1137), as amended by the Acts of January 20, 1944 (58 Stat. 4), July 1, 1944 (58 Stat. 677) and September 27, 1944 (58 Stat. 746), 8 U. S. C. (1946 ed.) 501, *et seq.*, provided in pertinent part:

> SEC. 401. A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:
>
> (a) Obtaining naturalization in a foreign state, either upon his own application or through the naturalization of a parent having legal custody of such person: *Provided, however*, That nationality shall not be lost as the result of the naturalization of a parent unless and until the child shall have attained the age of twenty-three years without acquiring permanent residence in the United States: *Provided further*, That a person who has acquired foreign nationality through the naturalization of his parent or parents, and who at the same time is a citizen of the United States, shall, if abroad and he has not heretofore expatriated himself as an American citizen by his own voluntary act, be permitted within two years from the effective date of [t]his Act to return to the United States and take up permanent residence therein, and it shall be thereafter deemed that he has selected to be an American citizen. Failure on the part of such person to so return and take up permanent residence in the United States during such period shall be deemed to be a determination on the part of such person to discontinue his status as an American citizen, and such person shall be forever estopped by such failure from thereafter claiming such American citizenship; or

(b) Taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state; or

(c) Entering, or serving in, the armed forces of a foreign state unless expressly authorized by the laws of the United States, if he has or acquires the nationality of such foreign state; or

(d) Accepting, or performing the duties of, any office, post, or employment under the government of a foreign state or political subdivision thereof for which only nationals of such state are eligible; or

(e) Voting in a political election in a foreign state or participating in an election or plebiscite to determine the sovereignty over foreign territory; or

(f) Making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; or

(g) Deserting the military or naval forces of the United States in time of war, provided he is convicted thereof by court martial and as the result of such conviction is dismissed or dishonorably discharged from the service of such military or naval forces: *Provided*, That notwithstanding loss of nationality or citizenship or civil or political rights under the terms of this or previous Acts by reason of desertion committed in time of war, restoration to active duty with such military or naval forces in time of war or the reenlistment or induction of such a person in time of war with permission of competent military or naval authority, prior or subsequent to [January 20, 1944], shall be deemed to have the immediate effect of restoring such nationality or citizenship and all civil and political rights heretofore or hereafter so lost and of removing all civil and political disabilities resulting therefrom; or

(h) Committing any act of treason against, or attempting by force to overthrow or bearing arms against the United States, provided he is convicted thereof by a court martial or by a court of competent jurisdiction; or

(i) Making in the United States a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the United States shall be in a state of war and the Attorney General shall approve such renunciation as not contrary to the interests of national defense; or

(j) Departing from or remaining outside of the jurisdiction of the United States in time of war or during a period declared by the President to be a period of national emergency for the purpose of evading or avoiding training and service in the land or naval forces of the United States.

APPENDIX B

IMMIGRATION AND NATURALIZATION SERVICE STATISTICS ON EXPATRIATION [1]

1. In his report to the Attorney General for the fiscal year ended June 30, 1956,[2] the Commissioner of Immigration and Naturalization has given the following statistics as to persons expatriated during the years ended June 30, 1951 to June 30, 1956:

Grounds	1951	1952	1953	1954	1955	1956
Total number	4,443	3,265	8,350	6,938	4,202	4,987
Voting in a foreign political election or plebiscite	1,401	1,186	2,651	2,222	1,237	1,436
Residence in a foreign state	1,084	711	2,657	1,557	1,093	1,775
Naturalization in a foreign state	836	622	1,677	1,544	841	829
Entering or serving in the armed forces of a foreign state	565	370	700	696	269	356
Renunciation of nationality	228	136	398	425	331	167
Taking an oath of allegiance in a foreign state	147	123	152	220	233	237
Departing from or remaining away from the U. S. to avoid training and service in land or naval forces	69	59	45	134	139	69
Accepting or performing duties under a foreign state	73	56	67	134	84	112
Other grounds	40	2	3	6	5	5

[1] These statistics include, of course, only those expatriations known to the Immigration and Naturalization Service (including information received from the Department of State).

[2] The Attorney General's Report for 1956 is now being printed.

2. The Annual Reports of the Commissioner of Immigration and Naturalization for the years ended June 30, 1949, and June 30, 1950, contain the following comparable figures:

Grounds	1949	1950
Total	8,575	5,792
Voting in a foreign political election or plebiscite	4,515	1,693
Residence in a foreign state	694	1,424
Naturalization in a foreign state	754	1,096
Entering or serving in the armed forces of a foreign state	1,459	721
Renunciation of nationality	356	149
Taking an oath of allegiance in a foreign state	430	369
Departing from or remaining away from the U. S. to avoid training and service in land or naval forces	259	109
Accepting or performing duties under a foreign state	99	163
Desertion from the armed forces in wartime	4	4
Other grounds	5	64

3. Expatriation figures for the years prior to 1949 are less accurate, because of the dislocation occasioned by World War II. The total figure of expatriations given by the Immigration and Naturalization Service for the year ended June 30, 1948, is 6,779 and for the year ended June 30, 1947, is 6,758.